

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Order 6-6-7
Served 6/10/96

Issued by the Department of Transportation
on the 4th day of June, 1996

Agreements adopted by the Tariff :
Coordinating Conferences of the : Dockets: OST-96-1322
International Air Transport Association : and OST-96-1323,
relating to TC31 Fares and Conditions : R-1 to R-6

ORDER

Various members of the International Air Transport Association (IATA) have filed agreements with the Department under section 41309 of Title 49 of the United States Code (U.S.C.) and Part 303 of the Department's regulations. The agreements were adopted by mail vote. 1/

The agreement in Docket OST-96-1322 sets normal first, business, and economy fares from San Francisco to Hong Kong equal to fares currently charged in the marketplace. The agreement in Docket OST-96-1323, for travel from Japan to North America and the Caribbean, amends the seasonal periods for selected excursion fares, limits rebooking for intermediate class spouse fares to a time after the initial departure, amends blackout periods, and generally reduces the special excursion (PEX) and group inclusive tour (GIT) fares.

We will approve the agreements, subject to conditions. Based on our review of the information submitted and other relevant material, we conclude that the agreements, as conditioned, will not result in fares that are unlawful or injurious to competition in the markets at issue.

Our approval of the proposed premium and promotional fares is consistent with Department policy as stated in Order 85-3-8, March 4, 1985. We allow carriers wide latitude in pricing these types of fares, which are generally sensitive to market demand and other competitive pressures that obviate the need for regulatory intervention in most circumstances.

Several resolutions containing changes to normal fares and condi-

1/ IATA memorandum TC31 (Mail 799)010m (Docket OST-96-1322) and PTC31 (Mail 801)010o (Docket OST-96-1323), filed with the Department on April 29, 1996.

tions for U.S. points have been submitted to us for approval where there is no direct service in any of the affected U.S. markets. For these markets we will not impose our standard conditions holding the proposed normal economy fares to regulatory ceilings based on the Standard Foreign Fare Level (SFFL). 2/

We do, however, continue our regulatory supervision over direct service normal economy fares. 3/ The agreement in Docket OST-96-1322 proposes to establish an economy fare in the San Francisco-Hong Kong market that is above the Department's regulatory ceiling as established by the SFFL plus upward fare flexibility. 4/ The carriers have not furnished any economic justification in support of this fare level. Under these circumstances, we will condition our approval of the agreement to require that the direct-service normal economy fare shall be no higher than the Department's applicable regulatory ceiling, and that each carrier, when filing tariffs implementing the agreement, provide a comparison of its proposed direct-service normal economy fare against the Department's SFFL ceiling level.

Acting under Title 49 of the United States Code, and particularly sections 40101, 40103, 41300, and 41309:

1. We do not find that the resolutions set forth in the Attachment to this order and which have direct application in foreign air transportation as defined by the Code, are adverse to the public interest or in violation of the Code, provided that (a) the normal economy fare for the San Francisco-Hong Kong direct-service market filed by each IATA carrier in tariffs with the Department pursuant to resolution TC31(Mail 799)010m shall not exceed the regulatory ceiling at the time of filing, and (b) each IATA carrier submits, at the time of filing and for comparative purposes, the SFFL base fare, proposed direct-service normal economy fare, and the percentage by which its proposed direct-service normal economy fare differs from the SFFL base level;

2. This agreement is a product of the IATA tariff conference machinery, which the Department found to be anticompetitive but

2/ See, for example, Orders 89-4-42, April 18, 1989, and 88-4-5, April 1, 1988.

3/ We generally exercise regulatory control over point-to-point economy fares, generally defined as "unbundled" or "restricted" fares, and, in markets where they are unavailable, the unrestricted economy fares.

4/ For example, the agreement in Docket OST-96-1322 would establish the San Francisco-Hong Kong economy fare at \$1,101 one-way, whereas the current regulatory ceiling is \$1,062.

nevertheless accepted on foreign policy and comity grounds by Order 85-5-32, May 6, 1985. The Department found that important transportation needs were not obtainable by reasonably available alternative means having materially less anticompetitive effects. Antitrust immunity was automatically conferred upon these conference agreements because, where an anticompetitive agreement is approved in order to attain other objectives, such conferral is mandatory under 49 U.S.C. 41308.

Order 85-5-32 contemplates that the products of fare and rate conferences will be subject to individual scrutiny and will be approved, provided they are of a kind specifically sanctioned by Order 85-5-32 and are not adverse to the public interest or in violation of the Code. As with the underlying IATA conference machinery, upon approval of a conference agreement, immunity for that agreement must be conferred under the Code. Consequently, we will grant antitrust immunity to the agreements in Dockets OST-96-1322 and OST-96-1323, as set forth in finding paragraph 1 above, subject to the conditions imposed therein.

ACCORDINGLY,

We approve and grant antitrust immunity to the agreements contained in **Dockets OST-96-1322 and OST-96-1323**, set forth in finding paragraph 1 above, subject to the conditions imposed therein.

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)

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Resolutions With Direct Application In Foreign Air Transportation,
Docket OST-96-1322 and Docket OST-96-1323

1. Docket OST-96-1322, TC31 North and Central Pacific Special Passenger Amending Resolution, TC31(Mail 799)010m

Normal Fares from San Francisco to Hong Kong:

FOW (First Class, one-way)	USD 2,715
COW (Intermediate Class, one-way)	USD 1,513
Y2OW (Economy Class, one-way)	USD 1,101

2. Docket OST-96-1323, TC31 North and Central Pacific Special Amending Resolution From Japan To North America, Caribbean, PTC31(Mail 801)010o

<u>Reso.</u>	<u>Description</u>	<u>No.</u>
074r	North And Central Pacific Special Excursion (PEX) Fares From Japan To North America, Caribbean (Revalidating and Amending)	R-1
085tt	North And Central Pacific Group Inclusive Tour Fares From Japan To North America, Caribbean (Revalidating and Amending)	R-2
091p	Intermediate Class Spouse Fares From Japan To Hawaii (Amending)	R-3
090c	Companion Fares From Japan To Hawaii (Amending)	R-4
091m	Intermediate Class Spouse Fares From Japan To North America, Caribbean (Amending)	R-5
091z	First Class Senior Citizen Spouse Fares From Japan To Hawaii (Amending)	R-6